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FEDERAL ELECTION COMMISSION

999 E Street, N.W.

Washington, D.C. 20463

CELA

FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

Pre-MUR: 484

DATE MATTER REFERRED: 2/23/09

DATE ACTIVATED: 3/16/09

PRE-RTB NOTIFICATION RESPONSE

RECEIVED: 08/17/09

EXPIRATION OF SOL: 3/31/10¹

RESPONDENT:

Gladwin Gill

RELEVANT STATUTES:

2 U.S.C. § 441f

11 C.F.R. § 110.4(b)(iii)

INTERNAL REPORTS CHECKED:

Disclosure Reports

I. INTRODUCTION

On December 14, 2007, Gladwin Gill ("Gill") was named in a one-count felony Information filed in Los Angeles, California. The Information alleges that beginning on or about June 26, 2003, and continuing to on or about March 31, 2005, Gill asked or instructed various friends and employees of his company to make monetary contributions totaling \$66,700 to several federal election campaigns in violation of 2 U.S.C. § 441f of the Federal Election Campaign Act ("Act"). See

¹ All of the contributions still within the statute of limitations occurred on 3/31/05 thereby resulting in the expiration of the statute of limitations for all contributions on 3/31/10.

Attachment 1. In the criminal plea agreement ("Plea Agreement"), filed on the same day as the Information, Gill admitted the allegations contained in the Information. *See* Attachment 2.

On December 10, 2008, Gill was sentenced to one year and one day in federal prison followed by three years of supervised release, including six months of home detention. Gill was also assessed a fine of \$200,100 (300% of the amount in violation of 2 U.S.C. § 441f) to be paid within 30 days after sentencing. He reported to the U.S. Bureau of Prisons on May 29, 2009, and is currently incarcerated in a facility in Los Angeles, California.

For reasons set forth below, we recommend that the Commission exercise its prosecutorial discretion and decline to open a matter under review as to all potential respondents.

II. FACTUAL OVERVIEW

Neither the Information nor the Plea Agreement identified the names of the conduits or recipient committees or provided information as to whether the entity whose funds were used for the reimbursements was a corporation. *See* Attachments 1 & 2. The entity was only identified as a "company," and the only information provided for the conduit contributions were the dates the contributions were made as well as the initials of the conduits and the recipient committees. *Id.*

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7 The Information identifies multiple straw contributions to various federal
8 candidates and committees. Based on our independent search of the Commission's
9 disclosure database, we were able to obtain the names of additional individuals who most
10 likely acted as conduits. We believe that we have a complete list of the straw
11 contributions at this time.

12 The following is the portion of the chart provided in the Information detailing the
13 straw contributions still within the statute of limitations²:

Date	Contributor	Recipient	Contribution Amount
3/31/05	Ji	GA	\$2,100
3/31/05	AZ	GA	\$2,100
3/31/05	AZ	GA	\$2,100
3/31/05	LG	GA	\$2,100
3/31/05	LG	GA	\$2,100
3/31/05	SG	GA	\$2,100
3/31/05	SG	GA	\$2,100
		TOTAL	\$14,700

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² We note that the straw contributions, totaling \$42,000, which occurred between 6/26/03 and 4/14/04 are outside of the statute of limitations and therefore are not subject to penalties.

The second chart lists contributions that we were able to obtain in our search of the Commission's disclosure database that appear to match the contributions contained in the Information:

Date	Contributor	Recipient	Contribution Amount
3/31/05	Joel Ingram	Friends of George Allen	\$2,100
3/31/05	Adelea Zelaya	Friends of George Allen	\$2,100
3/31/05	Adelea Zelaya	Friends of George Allen	\$2,100
3/31/05	Lazarus Gill	Friends of George Allen	\$2,100
3/31/05	Lazarus Gill	Friends of George Allen	\$2,100
3/31/05	Salina Gill	Friends of George Allen	\$2,100
3/31/05	Salina Gill	Friends of George Allen	\$2,100
		TOTAL	\$14,700

On June 30, 2009, we sent a pre-reason to believe notification letter ("pre-rtb notification letter") to Gill informing him of the possibility of being named as a respondent for violations of the Act. In addition, Gill was provided with the opportunity to submit written factual or legal materials relevant to the matter within 15 days from the date of the letter.³

Gill's counsel, Mr. Johnston, requested and was granted a ten (10) day extension to respond to the pre-rtb notification letter. On August 17, 2009, we received, by facsimile, Mr. Gill's response. See Attachment 3. Gill primarily argues that the

³ On July 16, 2009, Gill responded by requesting that we contact Thomas Johnston, the attorney who represented him in the criminal matter. On July 23, 2009, we made contact with Mr. Johnston and subsequently faxed a copy of the pre-rtb notification letter to him. At that time, we requested that any request for an extension to file a response be provided in writing as soon as possible.

1 "imposition of a punitive sanction against Mr. Gill by the Commission would be barred
2 by the Double Jeopardy Clause of the Fifth Amendment of the U.S. Constitution." *Id.* at
3 2. In addition, Gill argues that "developing case law now calls into question whether
4 'conduit' contributions of the type referenced in the Commission's notification letter are,
5 in fact, prohibited under the language of 2 U.S.C. § 441f," citing to *U.S. v. O'Donnell*,
6 C.D. Cal., Criminal No. 08-872. *Id.* at 3.

7 **III. ANALYSIS**

8 The Act provides that no person shall make a contribution in the name of another
9 person or knowingly permit his or her name to be used to effect such a contribution, and
10 that no person shall knowingly accept a contribution made by one person in the name of
11 another person. *See* 2 U.S.C. § 441f.⁴ Furthermore, the Commission regulations provide
12 that no person shall "knowingly help or assist any person in making a contribution in the
13 name of another." 11 C.F.R. § 110.4(b)(1)(iii).

14 Gill's Plea Agreement describes a scheme to funnel contributions through family
15 members and employees of his company to various federal candidates and committees.

⁴On June 8, 2009, a federal district court judge in California dismissed criminal charges that Pierce O'Donnell violated section 441f by reimbursing conduit contributions to the 2004 presidential campaign of Senator John Edwards, ruling in part that Congress did not intend that provision to outlaw indirect contributions made through conduits. *U.S. v. O'Donnell*, C.D. Cal., Criminal No. 08-872. However, the *O'Donnell* court's order is unlikely to be upheld on appeal because (1) it mistakenly assumes Section 441f prohibits all conduit contributions, including those reported under Section 441a(a)(8); (2) its analysis that the statutory construction of Section 441f is inconsistent with other provisions of the Act that explicitly identify "direct or indirect" contributions fails to realize that all "contribution[s] in the name of another" are inherently indirect; and (3) it mischaracterizes the legislative history to support the conclusion that Section 441f does not prohibit the reimbursement of conduit contributions. *See* MUR 5818 (Feiger) General Counsel's Report #2 at 15; Memorandum re: Recommendation to Participate as Amicus Curiae in *United States v. O'Donnell*, No. 09-50296 (9th Cir.), dated July 21, 2009. On September 23, 2009, the Commission filed an amicus curiae brief urging the Ninth Circuit to reverse the *O'Donnell* decision. *See* MUR 5504 (Karoly) and MUR 5818 (Feiger) (recent Commission matters involving Section 441f violations).

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1 Attachment 2. Gill admitted to knowingly and willfully causing to be made various straw
2 contributions through these individuals and reimbursing them with company funds in
3 violation of 2 U.S.C. § 441f. He attempted to conceal the true source of the
4 contributions.

5 Despite Gill's clear violation of section 441f, we conclude that Gill's punishment
6 in the criminal context for the activity in the present matter, including the substantial fine
7 imposed upon him, is sufficient. Gill is currently serving a prison sentence of 12 months
8 and one day, he will be confined at home for six months, and he is required to pay a fine
9 of \$200,100. Further, the statute of limitations for a majority of the contributions,
10 totaling \$52,000, expired :

11 The statute of limitations as to the remainder of the contributions (\$14,700) will expire on
12 March 31, 2010, less than five months from now. The time constraints will likely present
13 some difficulty in completing the enforcement process before the statue completely
14 expires. Continuing to pursue Gill under these circumstances does not appear to be a
15 prudent use of Commission resources. Thus, we recommend that the Commission
16 exercise its prosecutorial discretion and decline to open a matter under review with
17 respect to Gill.⁵

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19 we still have not confirmed which of

⁵ The second argument raised by Gill in his pre-rtb response is that "despite the statute's denomination of the fine authorized by 2 U.S.C. § 427g(a)(5)(B) as a 'civil' penalty, that fine is a quasi-criminal sanction subject to double jeopardy preemption and cannot be distinguished as a mere 'civil,' as opposed to criminal remedy." See Attachment 3 at 2. Gill cites to *Hudson v. U.S.*, 522 U.S. 93, 118 S.Ct. 488 (1997) in support of this argument. Given our recommendation not to proceed against Gill, it is unnecessary for the Commission to resolve this issue. Even so, we believe that a subsequent civil proceeding and penalty against Gill would not violate the Double Jeopardy Clause under the two-part test set forth in *Hudson* and *United States v. Ward*, 448 U.S. 242, 248, 100 S.Ct. 2636, 2641 (1980).

1 the two corporations' funds were used by Gill. In order to answer the question of
2 whether the Commission should consider pursuing the corporation for a potential
3 violation of section 441b, we would need to initiate an investigation, and, as stated above,
4 the statute of limitations poses a significant logistical problem. Therefore, we
5 recommend that the Commission exercise its prosecutorial discretion and decline to open
6 a matter under review as to the potential corporate respondent.

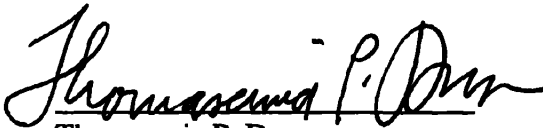
7 Finally, as to the individual conduits, we do not recommend that the Commission
8 pursue them either. There have been enforcement matters where the Commission has
9 pursued conduits in these types of matters.⁶ However, given that we would need to
10 initiate an investigation to determine which corporation's funds were used for
11 reimbursement purposes, and the looming expiration of the statute of limitations, we do
12 not believe it would be a prudent use of the Commission resources to pursue the conduits.

13 In closing, we, therefore, recommend that the Commission exercise its
14 prosecutorial discretion and decline to open a matter under review as to all of the
15 potential Respondents in this matter and close the file.

16 **IV. RECOMMENDATIONS**


- 17 1. Decline to Open a Matter Under Review;
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19 2. Approve the appropriate letter; and
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21 3. Close the file.

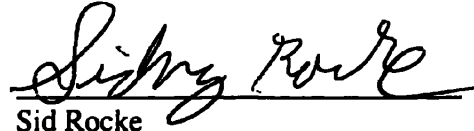
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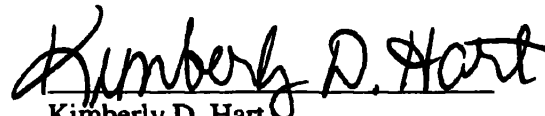
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Thomasenia P. Duncan
General Counsel

⁶ See MUR 5666 (MZM), MUR 5504 (Karoly)
instances where the Commission has pursued some of the conduits.

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